88-2119

Supreme Court, U.S.
FILED
JUN 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

EUGENE MEYER, *et al.*,
Petitioners,

vs.

TIMOTHY D. BARNES, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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(314) 961-4365
Attorney for Petitioner

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QUESTION PRESENTED

1.

Is a labor union severance pay plan, reaffirmed after bankruptcy of the local union, subject to the provisions of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001, *et seq.*

PARTIES IN THE COURT BELOW

1. The Petitioners are Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, John C. Fisher, and James T. Schmidt, who are former officers and business agents of the Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, which is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

2. The Respondents are Timothy D. Barnes, Ernest Kon, Robert Robertson, James Mason, individually and as representatives, officers and agents of the Highway, City and Air Freight Drivers, Dockmen and Helpers, Local Union No. 600, a labor union, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization, and, Jackie Presser and Weldon Mathis, individually and as representatives, officers and agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization.

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TIMOTHY D. BARNES, *et al.*,
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For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

The Petitioners,[1] Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, and John C. Fisher, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in this proceeding on February 6, 1989.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is reported at 867 F.2d 464 (8th Circuit 1987), and is set out in the separate Appendix to this Petition at pp. A-11 - A-16. The orders of the Court of Ap-

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[1] Eugene C. Lemke, a Plaintiff in the proceeding below, has not joined as a Petitioner.

peals affirming the District Court and denying rehearing are set out in the Appendix at p. A-17. The opinion of the District Court is unreported. The opinion is set out in the Appendix at pp. A-3 - A-8.

JURISDICTION

The judgment of the Court of Appeals affirming the District Court's granting of summary judgment in the case was entered on February 6, 1989 (A-11).

The Court of Appeals entered an order denying the timely Petition for Rehearing en banc, and also denying the Petition for Rehearing on March 30, 1989, and this Petition for Certiorari is filed within 90 days of that date (A-17). The jurisdiction of this Court is invoked under 28 U.S.C. 2101(c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

This case involves the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1000 *et. seq.* (ERISA).

STATEMENT OF THE CASE

Petitioners are former officers and business agents of Local Union 600 of the Highway and City Freight Drivers, Dockmen and Helpers Union. Local 600 went into bankruptcy in September, 1976. Petitioners held their positions from 1975 and following the bankruptcy proceedings. A proof of claim in bankruptcy was filed by Petitioners for severance pay under the locals' welfare benefit plan. Petitioners reaffirmed the welfare benefit plan providing for severance pay as officers of the union following discharge in bankruptcy under the Bankruptcy Act.[2] Petitioners were defeated in an election of officers in early

[2] The Bankruptcy Act in effect in 1980, when the Union obtained its discharge, prescribed no procedures for reaffirmation at that time.

December, 1980. Subsequent thereto, they reaffirmed the severance pay plan. Subsequent demand upon the new officers of the local for benefits under the plan were denied. Petitioners exhausted their remedies within the local and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with which it was affiliated. Suit was thereafter filed in the Circuit Court of the City of St. Louis, Missouri, to seek enforcement of the severance pay plan benefits. The case has a complicated history. It was originally filed as a declaratory judgment action in the State Court; thereafter removed to Federal Court and then remanded to State Court; again removed to Federal Court on grounds of Federal jurisdiction under ERISA; thereafter the matter was placed on the trial docket of the Federal Court until the Court granted the motion of Respondents for summary judgment. The United States District Court found that local 600's reaffirmation of the severance pay plan was in conflict with the Constitution of the International Union. Neither the ERISA statute or state law controlled the decision of the Court. (app. page A-8). The local union had been out of bankruptcy proceedings for four months when the plan was reaffirmed. The local union continued to function as a labor union throughout the bankruptcy, and members continued to pay regular dues.

The severance pay plan did not cause the bankruptcy of the local union. Bankruptcy was precipitated by a judgment rendered against the union for an unlawful strike in the sum of $5,500,000.00 plus.

Although stipulated that the severance pay plan was in existence for ten years prior to the bankruptcy, the United States Court of Appeals for the Eighth Circuit found that the Petitioners had not established the existence of the severance pay plan, although it did acknowledge that welfare benefit plans such as the severance pay plan are subject to provisions of ERISA. (app. page A-16). The Court of Appeals affirmed summary judgment, again relying upon the relationship of the local union and the International's constitution. (app. page A-15).

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES SIGNIFICANT QUESTIONS CONCERNING THE APPLICABILITY OF THE EMPLOYER RETIREMENT INCOME SECURITY ACT OF 1974, P.L. 93-406, TO UNFUNDED WELFARE BENEFIT PLANS IN EXISTENCE PRIOR TO THE PASSAGE OF THAT ACT WHICH HAVE BEEN REAFFIRMED FOLLOWING BANKRUPTCY PROCEEDINGS, AND IS OF NATIONAL IMPORTANCE CONCERNING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, WHICH SHOULD BE RESOLVED BY THIS COURT.

This case presents for the Court's determination the issue of whether the broad usurpation of Common Law under the Employee Retirement Income Security Act of 1974, ERISA, Public Law 93-406, permits the application of common law in governing the remedies of beneficiaries under a union welfare benefit plan who have been denied benefits.[3] The severance pay plan involved is exempt from certain substantive requirements of ERISA, such as funding and participation. 29 USCS § 1051(1) ERISA § 201(1), 29 USCS § 1081(a)(1) ERISA § 301(1).

Initially, we point out that the analysis of the Eighth Circuit Court of Appeals is seriously deficient in stating that the local union had not implemented a severance pay plan. (app. page A-16). The plan was in existence since 1966, and was reaffirmed following bankruptcy. Presumably, the Eighth Circuit considered a written plan to be a mandatory pre-requisite under ERISA, (app. page A-10). Under ERISA, a written plan is not a prerequisite. The surrounding circumstances determine whether a reasonable person could ascertain the intended

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[3] ERISA was designed to protect Interstate Commerce, the federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans. 29 USCS § 1001(c) ERISA § 2(c).

benefits, beneficiaries, source of financing, and procedures for receiving benefits. See *Donovan v. Dillingham,* (1982 CA 11) 688 F.2d 1367. Therefore, a written plan was not a pre-requisite to a remedy, in light of the fact that the actual existence of the plan was stipulated by the parties below.

The Eighth Circuit was correct, however, when it stated that severance pay plans are welfare benefit plans under ERISA. (app. page A-16). See *Simmons v. Diamond Shamrock Corporation,* 844 F.2d 517, 520. Nonetheless, the opinion of the District Court was affirmed on theories resting on common law principles. (app. page A-15).

Petitioners argue that Congress, in enacting ERISA, intended that the degree to which common law and state law was usurped by ERISA was to be determined in the lower courts. Here, state law was not directly involved but rather the interpretation of the Constitution of the International Union which in the last analysis became the controlling factor in the decision of the lower courts. (app. page A-15). The lower courts made no substantive ERISA analysis, thereby creating uncertainty regarding the remedies under ERISA for beneficiaries of unfunded welfare benefit plans such as the one in issue here. Since a trial was precluded by the granting of summary judgment, no evidence was adduced to permit analysis of the plan under applicable Labor Department regulations to determine remedies available under ERISA, 29 CFR § 2510.3-2(b)(1). Congress has given the Courts the duty to create federal common law concerning aspects of employee benefit plans not specifically regulated under ERISA, such as the labor union severance pay plan involved here. *Donovan v. Dillingham,* (1982, CA 11) 688 F.2d 1367. For example, the fact that an unfunded *deferred compensation* plan had been exempted from most of the substantive provisions of ERISA, like the severance pay plan here in issue, did not signify a congressional intent to exempt such a plan from private civil action under ERISA. See *Barrowclugh v. Kidder, Peabody & Co.,* (1985 CA 3) 752 F.2d 923, 6 EBC 1170.

Petitioners were employees of a local labor union intrinsically involved in the interstate commerce of this nation. They were employed not by the International Union of Teamsters, but by their St. Louis local. The severance pay plan was instituted by the local union, not by the International. Had Petitioners been employed by a private corporation, their expectations of severance pay and their remedies under ERISA would have been subject to a straightforward analysis under the statute. However, the lower courts unduly placed an additional burden upon the Petitioners as union employees by imputing a "bad-boy" clause to the ERISA statute. If unfunded severance pay benefits are subject to a "bad-boy" provision, as a matter of federal common law, then Petitioners were entitled to a trial on the merits of this theory, because this was a genuine issue of material fact. F.R.C.P. Rule 56(c). Trial was denied by the District Court on the basis of a provision of private law, to wit: the Constitution of the International Union. (app. page A-15).

By reversing the Eighth Circuit and permitting a trial on the merits, this Court will substantially enhance the body of federal common law relating to unfunded welfare benefit plans and the rights and remedies of union officers and agents who are integral components of interstate commerce in this nation.

CONCLUSION

If the Court allows the decision of the Eighth Circuit to stand, then the expectations of employees of unions will be subject to a set of standards significantly different from employees in private industry, and the potential adverse effects on interstate commerce will be substantially enhanced.

Respectfully submitted,

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Attorney for Petitioners

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
OFFICE OF THE CLERK
1114 Market Street
St. Louis, Missouri 63101

Eyvon Mendenhall
Clerk

Phone: 314-425-4315
FTS 279-4315

February 23, 1988

RE: 87-1218C(A)
Meyer vs. Barnes

Stephen Gilmore
1221 Locust St., Ste. 500
St. Louis, MO 63103

w/order x

Enclosed is a copy of a MEMORANDUM OPINION entered this day by the Honorable Roy W. Harper in the above-styled cause.

Cary Hammond
Jan Bond
7730 Carondelet, Ste. 222
Clayton, MO 63105

_____ Enclosed is a copy of an ORDER entered this date by the Honorable Roy W. Harper in the above-styled cause.

David Leo Uelmen
Scott D. Soldon
788 N. Jefferson St.
P.O. Box 92099
Milwaukee, WI 53202

_____ Enclosed is a copy of an ORDER & MEMORANDUM entered this date by the Honorable Roy W. Harper in the above-styled cause.

_____ Enclosed is a copy of a MEMORANDUM & ORDER entered this date by the Honorable Roy W. Harper in the above-styled cause.

Very truly yours,

EYVON MENDENHALL, CLERK

/s/ Carrie Murphy
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 87-1218C (A)

Eugene Meyer, et al.,
Plaintiffs,

vs.

Timothy D. Barnes, et al.,
Defendants.

MEMORANDUM OPINION

(Filed Feb. 23, 1989)

Two motions for summary judgment have been filed: One on behalf of defendants, Timothy Barnes, Ernest Kon, Bobby Robertson and James Mason, individually and as representatives of Local 600 (hereinafter referred to as the Local 600 motion), and the other on behalf of defendants, Jackie Presser, Weldon Mathis and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the IBT motion). The cause of action arises under the Employment Retirement Income Security Act of 1974 (ERISA), 28 USC 1001, *et seq*.

The plaintiffs, Thomas C. Welch, Eugene Meyer, Theodore N. Welch, James T. Schmidt, John T. Fisher, Thomas P. Knox and Eugene Lemke, are former business officers, or officers comprising the Executive Board of Local 600.

Plaintiffs and defendants have stipulated that the following facts give rise to this litigation. On April 1, 1970, Local 600 struck several interstate trucking companies. Most of these trucking companies belonged to the Motor Carriers Council of St. Louis, Inc. (hereinafter Motor Carriers). On April 17, 1970, Motor Carriers filed suit against Local 600 in the district court,

alleging that the strike breached their collective bargaining agreement. On October 3, 1974, the Court entered judgment for Motor Carriers, and against Local 600 for $5,796.341.18. On appeal by Local 600, the Eighth Circuit affirmed. On September 24, 1976, Local 600 filed a petition in bankruptcy. Motor Carriers challenged the discharge in bankruptcy of the money awarded them by the district court's judgment. On March 12, 1979, the bankruptcy court ruled that Local 600's debt to Motor Carriers was non-dischargeable in bankruptcy.

Plaintiffs had been elected officers comprising the Executive Board of Local 600. The election took place in December, 1974. Under normal circumstances, plaintiffs would have taken office on January 1, 1975, but Local 600 had been placed under temporary trusteeship by IBT, with whom it is affiliated, and thus, plaintiffs did not actually assume their full duties until February 16, 1975, when IBT lifted the trusteeship. In August, 1980, when Local 600 emerged from bankruptcy, the same individuals remained in office. On December 8, 1980, an election for officers was held. Plaintiffs Welch, Fisher, Schmidt, Pettus and Giese were defeated. The newly elected officers took office on January 1, 1981, and pursuant to Local 600's Constitution and By-Laws, the new president dismissed plaintiffs Welch, Meyer and Lemke, trustees appointed by the new president's predecessor.

In December, 1976, plaintiffs filed proofs of claims in the Local 600 bankruptcy proceeding. These proofs of claims were for severance pay which plaintiffs claimed Local 600 owed to them, computed on the basis of one month's salary for each year of employment with Local 600. Plaintiffs based their claim for severance pay on the following resolution adopted by the Executive Board on February 13, 1974:

> "Any full-time officer or business representative who shall die or terminate his employment for any reason, other than discharge for cause, or shall vacate an elected office for

> any reason, shall receive severance pay in an amount equal to one month's pay for each full year of service, either as an officer or business representative, with a maximum of fifteen (15) months pay. Severance pay shall be computed at the rate of compensation of the officer or business representative at the time of his death, termination or vacation of office."

As part of the settlement agreement between Local 600 and Motor Carriers, each plaintiff, on March 31, 1980, filed a waiver whereby plaintiffs would relinquish their claims to any distribution from Local 600's bankrupt estate.

On December 8, 1980, after the election results were announced, the Local 600 Executive Board held a meeting. Plaintiffs Welch, Fisher, Schmidt and Knox comprised a majority of the seven-member board. At this meeting, the Board voted "to reaffirm all Local 600 employees' wages and/or salaries and all vacation time and/or pay and all monies to which they were entitled, at the time of the filing of the bankruptcy." The Board also voted to approve vacation pay to all officers, business representatives and organizers. It was necessary to cash in some certificates of deposit because Local 600's checking account would not cover the vacation pay. Local 600's Constitution and By-Laws require that all checks contain the signatures of both the president and the secretary-treasurer. Secretary-Treasurer Roy Howard resigned from office on December 29, 1980, two days prior to the expiration date of his term. The Board authorized Recording Secretary Schmidt to co-sign the checks with President Welch.

After the new Executive Board took office, the members refused to grant plaintiffs' demand for severance pay. Plaintiffs appealed to the Joint Council of Teamsters No. 13. The Joint Council refused to reinstate the issue of severance pay. Plaintiffs appealed to IBT, but IBT has not responded. Although the record demonstrates local 600's history of gran-

ting severance pay, only one payment was made subsequent to the affirmance by the Eighth Circuit of Motor Carrier's judgment. This was a payment equal to one week's salary made to the widow of one of Local 600's business agents, who had died during his term of employment.

On January 1, 1984, the Local 600 membership adopted a new Local 600 Constitution and By-Laws, which now provide, "No severance payment in any amount shall be paid to officers, agents and employees when leaving their positions." Note that the Local 600 Constitution and By-Laws incorporate by reference IBT's Constitution. In the event of inconsistencies, IBT's Constitution supercedes Local 600's Constitution and By-Laws. Note also that IBT's Constitution contains the following provision:

> "Local Unions shall not adopt By-Laws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge of their obligations to their members in the negotiation and administration of collective bargaining agreements *and in conducting the affairs of the Local Union as a solvent organization.* (Emphasis added.) Art. VI, §4(b).

The Local 600 defendants have filed a motion for summary judgment on the grounds that the vote of the Board in December, 1980, wherein plaintiffs voted to authorize severance pay for themselves, was manifestly unreasonable, constituted a gross abuse of fiduciary duty to Local 600, violated IBT's Constitution, and was void under the Labor Management Reporting and Disclosure Act of 1959, 29 USC 501(c).

There is no evidence that defendants violated 29 USC 501. Local 600 makes a good argument, however, for finding that plaintiffs violated IBT's Constitution. The parties have stipulated that Local 600 is bound by IBT's Constitution. The pertinent sections of IBT's Constitution is set out above. The

parties have also stipulated that over the last several years Local 600 has made certain payments to Motor Carriers, has had a substantial financial deficit, and has maintained a checking account balance ranging from a high of $14,875.16 (1/1/87) to a low of $19,962.49 in the red (6/1/87). (See Exhibit A attached.)

Plaintiffs argue that they assert valid claims for severance pay because they are reaffirming claims waived during Local 600's bankruptcy proceeding. Plaintiffs conveniently avoid addressing IBT's constitutional provision which prevents local unions from taking action which would result in insolvency. The sequence of events and the timing of plaintiffs' actions leading to this dispute do not exhibit a showing of good faith by plaintiffs. But even if plaintiffs have been acting in good faith, IBT's Constitution plainly prohibits plaintiffs from bankrupting Local 600. Granting plaintiffs' request for severance pay would do just that. The motion of Local 600 for summary judgment will be granted.

IBT has also filed a motion for summary judgment on the grounds that they did not play a part in, nor control, authorize, or ratify either payment or non-payment of the severance pay amounts plaintiffs seek. IBT also claims they did not control the actions of Local 600. Along with its motion, IBT has filed the affidavit of Walter J. Shea, executive assistant to the General President and Vice-President of IBT. Shea has stated that local unions are not the agents of IBT, but rather, local unions are "self-governing, unincorporated associations * * *." He also stated that local unions establish their own wage and fringe benefit schedules for their officers and staff.

IBT cites authority to support its argument that wrongs committed by the local union may not automatically be imputed to the international organizations. *International Brotherhood of Electrical Workers, AFL-CIO, et al. (Franklin Electric Construction Co.),* 121 NLRB 143, 146-147 (1958); *Coronado Coal Co. v. UMWA,* 268 U.S. 295, 304 (1925). IBT concedes that

the local union might have been considered its agent had the local union acted while in trusteeship.

IBT lifted its trusteeship over Local 600 on February 16, 1975. Plaintiffs voted to reaffirm their severance pay claims on December 8, 1980. Plaintiffs claim that IBT's counsel told plaintiffs to file their claim for severance pay with Local 600's Executive Board, then with International's Joint Council, and then to the International Brotherhood. Plaintiffs claim that this advice by IBT's counsel constitutes recognition by IBT of severance pay obligations to plaintiffs. It could be that he was merely advising plaintiffs to exhaust any administrative remedies that might be available to them prior to filing this suit. But, in any event, this advice clearly does not constitute ratification of the severance plan, nor could it have justified behavior which was contrary to the IBT constitutional mandates. The motion of IBT will be granted.

Accordingly, the separate motion of defendants, Timothy Barnes, Ernest Kon, Bobby Robertson and James Mason, individually and as representatives of Local 600, and the separate motion of defendants, Jackie Presser, Weldon Mathis and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, are each sustained, and summary judgment is granted in each.

The Clerk of the Court will prepare and enter the proper orders to that effect.

/s/ Roy W. Harper
U.S. District Judge

EXHIBIT A

At the end of 1980, Local 600 owed $1,749,697.60 to the Motor Carriers Council.

At the end of 1981, Local 600 had an overall financial deficit of $1,410,109.00.

At the end of 1981, Local 600 still owed $1,433,556.60 to the Motor Carriers Council.

During the fiscal year ending December 31, 1981, Local 600 paid $250,302.40 to the Motor Carriers Council and paid $259,074.80 in per capita taxes.

At the end of 1982, Local 600 had an overall financial deficit of $1,175,878.00.

At the end of 1982, Local 600 still owed $1,164,570.75 to the Motor Carriers Council.

During the fiscal year ending December 31, 1982, Local 600 paid $268,985.85 to the Motor Carriers Council and paid $263,732.05 in per capita taxes.

At the end of 1983, Local 600 had an overall financial deficit of $918,896.00.

At the end of 1983, Local 600 still owed $932,977.85 to the Motor Carriers Council.

During the fiscal year ending December 31, 1983, Local 600 paid $231,592.90 to the Motor Carriers Council and paid $252,554.76 in per capita taxes.

At the end of 1984, Local 600 had an overall financial deficit of $625,754.00.

At the end of 1984, Local 600 still owed $715,921.85 to the Motor Carriers Council.

During the fiscal year ending December 31, 1984, Local 600 paid $217,056.00 to the Motor Carriers Council and paid $249,457.30 in per capita taxes.

At the end of 1985, Local 600 had an overall financial deficit of $486,268.00.

At the end of 1985, Local 600 still owed $518,733.70 to the Motor Carriers Council.

During the fiscal year ending December 31, 1985, Local 600 paid $197,188.15 to the Motor Carriers Council and paid $230,293.90 in per capita taxes.

AT the end of 1986, Local 600 had an overall financial deficit of $262,953.00.

At the end of 1986, Local 600 still owed $333,252.52 to the Motor Carriers Council.

During the fiscal year ending December 31, 1986, Local 600 paid $185,481.18 to the Motor Carriers Council and paid $233,240.15 in per capita taxes.

As to the time period from January through October of 1987, the beginning and ending balances of Local 600's regular checking account fluctuated between a high of only $14,875.16 (January 1, 1987) to a low of $19,962.49 in the red (June 1, 1987). Also during this time period, Local 600 made the following monthly payments to the Motor Carriers Council: January -$15,887.00; February - $17,230.00; March - $15,900.00; April -$16,891.00; May - $15,468.00; June - $15,455.00; July -$17,376.00; August - $17,349.85; September - $13,506.15; and October - $17,043.95, leaving a balance of $157,841.25 still owed as of the end of October of 1987. Further during this period Local 600 paid monthly per capita taxes of between $13,506.15 and $30,338.00.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-1531

Appeal from the United States District Court
for the Eastern District of Missouri

Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, John C. Fisher, James T. Schmidt and Eugene C. Lemke,

Appellants,

v.

Timothy D. Barnes, Ernest Kon, Robert Robertson, James Mason, individually, and as representatives, officers and agents, of the Highway, City and Air Freight Drivers, Dockmen & Helpers, Local Union No. 600, a Labor Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Jackie Presser and Weldon Mathis, individually and as representatives, officers and agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers,

Appellees.

Submitted: November 16, 1988

Filed: February 6, 1989

Before FAGG and WOLLMAN, Circuit Judges, and WOODS*, District Judge.

WOLLMAN, Circuit Judge.

Appellants, former officers and business representatives of Highway, City and Air Freight Drivers, Dockmen and Helpers Local Union No. 600, appeal the district court's[1] grant of summary judgment to present officers of Local 600 and to officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT). We affirm.

On October 3, 1974, the United States District Court for the Eastern District of Missouri rendered a judgment for $5,796,341.18 against Local 600 and in favor of The Motor Carriers Council of St. Louis, Inc. As a result, Local 600 filed a voluntary petition in bankruptcy in the United States Bankruptcy Court on September 24, 1976.

On December 8, 1976, appellants filed proofs of claims in the bankruptcy proceeding. They claimed, among other things, severance pay computed on the basis of one month's salary for each year of employment with Local 600. They based these claims on a resolution adopted by the Local 600 executive board on February 13, 1974:

> Any full-time officer or business representative who shall die or terminate his employment for any reason, other than discharge for cause, or shall vacate an elected office for any reason, shall receive severance pay in an amount equal

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* The HONORABLE HENRY WOODS, United States District Judge for the Eastern District of Arkansas, sitting by designation.

[1] The Honorable Roy W. Harper, Senior United States District Judge for the Eastern District of Missouri.

> to one month's pay for each full year of service, either as an officer or business representative, with a maximum of fifteen (15) months pay. Severance pay shall be computed at the rate of compensation of the officer or business representative at the time of his death, termination or vacation of office.

In the fall of 1979, Local 600 and the Motor Carriers Council entered into a "Memorandum of Proposed Agreement." This agreement formed the basis of a comprehensive settlement concerning the creditors in bankruptcy. On October 31, 1979, the court authorized the trustee in bankruptcy to enter into the agreement.

As part of the comprehensive settlement, the trustee stipulated with Local 600 to obtain the written waivers of its officers and business representatives who had filed claims in the bankruptcy proceeding. Accordingly, on March 31, 1980, appellants waived their claims to severance pay. On August 22, 1980, the bankruptcy court granted Local 600 a general discharge in bankruptcy and released it from all dischargeable debts. Because the court had earlier noted that the Motor Carriers Council judgment was nondischargeable, that judgment survived.

On December 8, 1980, appellants Theodore Welch, Fisher, and Schmidt were defeated at the Local 600 election of officers. The new president, under the 1974 Local 600 constitution and bylaws, could appoint and remove all business agents and organizers, subject to the approval of the executive board. After the new president took office, he removed appellants Meyer, Lemke, Knox, and Thomas Welch.

During the time between the election of officers on December 8, 1980, and the beginning of the newly-elected officials' term on January 1, 1981, appellants Theodore Welch, Fisher, Schmidt, and Knox comprised a majority of the seven-member executive board. On December 19, 1980, the executive board approved the following resolution:

> Be it resolved that the Officers and Business Representatives of Teamsters Local 600 be entitled to severance pay in the amount as set forth per Executive Board Meeting of February 13, 1974, a copy of said minutes and resolution being attached here to and incorporated herein;
>
> And be it further resolved that in the event Local 600 disputes the claims for severance pay, and it is determined that Local 600 is liable, then any and all attorneys' fees incurred by officers and/or business representatives in obtaining said severance pay shall be assessed against Local 600.

On December 31, 1980, the executive board agreed to send the incoming board a written demand for a hearing concerning the payment of severance pay. The new executive board held such a hearing in February of 1981. Appellants requested severance pay totaling $191,000. The executive board denied the requests, whereupon appellants initiated this action. Appellants alleged that they were entitled to severance pay under the union's constitution and bylaws and the resolution of February 13, 1974. They claimed that Local 600 and IBT were jointly and severally liable because IBT had "ratified, implemented, and reaffirmed" the severance pay policies during a trusteeship of Local 600 that existed from June 1974 to February 1975.

In reviewing a grant of summary judgment, we apply the same standard as that applied by the district court. *United Tel. Co. v. Johnson Publishing Co.*, 855 F.2d 604, 607 (8th Cir. 1988). We thus will affirm the lower court's grant of summary judgment if "there is no genuine issue as to any material fact and * * * the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Local 600 and IBT assert that they do not owe appellants severance pay for several reasons: (1) the IBT constitution prohibits severance pay in the present circumstance; (2) appellants

violated their fiduciary duties under the Labor Management Reporting and Disclosure Act when they authorized the severance pay; and (3) appellants' claims for severance pay were discharged in Local 600's bankruptcy proceedings and were never validly reaffirmed. IBT additionally asserts that it is not responsible for the actions of Local 600 and neither participated in nor ratified the denial of severance pay.

The parties stipulated that Local 600 is bound by the IBT constitution. Article VI, Section 4(b) of the constitution provides the following:

> Local Unions shall not adopt Bylaws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge of their obligations to their members in the negotiation and administration of collective bargaining agreements and in conducting the affairs of the Local Union as a solvent organization.

Given the authority of this section, the only remaining question is whether the December 19, 1980, resolution authorizing severance pay and appellants' subequent demand for payment interfered with Local 600's ability to operate as a solvent organization. The parties have stipulated that over the last several years Local 600 has had a financial deficit.[2] According-

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[2] The parties stipulated that Local 600's financial situation from 1980 to 1986 was as follows:

	Debt to Motor Carriers Council	Overall Financial Deficit
1980	$1,749,697.60	--------
1981	1,433,556.60	$1,410,109.00
1982	1,164,570.75	1,175,878.00
1983	932,977.85	918,896.00
1984	715,921.85	625,754.00
1985	518,733.70	486,268.00
1986	333,252.52	262,953.00

ly, any request for and authorization of severance pay would interfere with Local 600's solvent operation.

Appellants claim that their actions did not interfere with Local 600's solvent operation because the union was already insolvent. This claim in essence is that $191,000 in additional debt is insignificant to an organization that already owes approximately $1,750,000. An addition of $191,000 in debt, however, would interfere with Local 600's ability to pay all other legal debts.

Appellants also contend that because they have not demanded immediate payment their claim does not violate the IBT constitution because Local 600 could delay paying until it is solvent. The resolution authorizing the severance pay itself, however, violated the IBT constitution. Because there is no valid authority on which to base the severance pay, payment—whether immediate or delayed—cannot be granted.

Appellants' final contention is that their claim is governed by the Employee Retirement Income Security Act of 1974 (ERISA). Although severance benefit plans are welfare benefit plans under ERISA, *see Simmons v. Diamond Shamrock Corp.*, 844 F.2d 517, 520 n.4 (8th Cir. 1988), appellants have not established that Local 600 implemented a severance benefit plan.

The order granting summary judgment is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-1531

Eugene Meyer, et al.,
Appellants,

vs.

Timothy D. Barnes, et al.,
Appellees.

Appeal from the United States District Court
for the Eastern District of Missouri

The suggestion for rehearing en banc has been considered by the Court and is denied by reason of the lack of majority of active judges voting to rehear the case en banc.

The petition for rehearing is also ordered denied.

March 30, 1989

Order Entered at the Direction of this Court:

/s/ Robert D. St. Vrain

Clerk, U. S. Court of Appeals, Eighth Circuit.